



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

TO: Barry E. Hill, Director, Office of Environmental Justice ("OEJ")
Office of Enforcement and Compliance Assurance ("OECA")

FROM: Theodore J. Kim, Legal Counsel, OEJ/OECA /s/ *Ted Kim*

DATE: December 21, 2006

RE: "Environmental Justice in the News" for the Week Ending December 22, 2006

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This memorandum summarizes select environmental justice news actions for the period beginning December 8, 2006 through the week ending December 22, 2006. The summary is limited to Lexis/Nexis searches conducted using the query: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/25 minorit! or low***income) or (executive order 12898) or (civil right! w/25 environmental) or ("fair housing act" w/25 (environment! or zon!))." Please note that articles on international or foreign-based environmental justice issues were not included.

1. **News Items.**

The following news was particularly noteworthy:

- **"New EPA Policies Could Prompt Legislation on Enforcement Projects," Inside EPA (Dec. 15, 2006).** According to the article, "Congress could be drawn into a contentious debate over the kinds of supplemental environmental projects ("SEPs") that environmental regulators allow industry to conduct instead of some fines and penalties as part of enforcement settlements." This summer, the United States Environmental Protection Agency ("EPA") updated its list of potential SEPs, which has caused industry groups to "worry that EPA is becoming too restrictive in the types of SEPs it allows facilities to conduct." In contrast, environmentalists articulate that "EPA allows too many projects that do not adequately benefit affected communities." Included among EPA's list of potential SEPs are storm water control projects, lead-based paint abatement projects, and projects to recycle mercury switches from vehicles. However, EPA will "no longer allow SEPs to provide funding for most diesel retrofit projects." While one environmental activist

welcomes the new restrictions on the SEPs, the activist asserted that “SEPs that do not benefit the community in a manner equivalent to the violation are ‘ridiculous’ and ‘examples of environmental racism.’”

- **“Lawmakers Focus on Emerging Water Contaminants, Bond Spending,” Inside Cal/EPA (Dec. 15, 2006).** According to the article, lawmakers in California are preparing draft proposals for the upcoming legislative session that direct “state agencies to reduce certain emerging water quality contaminants.” Water quality and flood control bills were mentioned as those that will likely be pursued when the State’s Legislature reconvenes on January 3, 2007. The article noted that the Assembly’s Environmental Safety & Toxic Materials Committee will likely “have a say in many of the new water-related legislation,” which will implicate issues of environmental justice and environmental health. The two issues will serve as a “filter” for all issues, according to the Committee’s new Chairman Jared Huffman (D-San Rafael).
- **“Radon Kits Available to Alton Park Residents,” Chattanooga Times Free Press (TN Dec. 11, 2006) at B2.** According to the article, the Chattanooga-Hamilton County Health Department will hand-out 300 test kits for radon, which are worth about \$1,500, to residents of Alton Park, Tennessee. The Alton Park neighborhood was chosen to receive the kits because a collaboration of groups, known as the Alton Park/Piney Woods Environmental Health and Justice Collaborative, were willing to distribute the kits to detect radon, which is associated with lung cancer. The residents in Alton Park have a “median household income of about \$11,000 per year and a poverty rate of 56.5 percent.”
- **“Mountain View Plant to Get 2nd Hearing,” Albuquerque Journal (N.M. Dec. 8, 2006) at 1.** According to the article, a hearing officer will hear an appeal of an air quality permit issued to Vulcan Materials Co. (“Vulcan”) for its concrete batch plant. The Mountain View Neighborhood Association, along with others, filed the appeal to the permit that was issued on December 5, 2006 citing “concerns about environmental justice, because the neighborhood . . . has some of the worst air quality in the City.” The appeal will take place on January 10, 2006 at the monthly meeting of the Albuquerque-Bernalillo County Air Quality Control Board.
- **“Climate: Incoming EPW Committee Chairwoman Barbara Boxer Outlines Agenda for 2007,” E&E News (Dec. 7, 2006).** The article set forth a transcript of Senator Barbara Boxer’s (D-CA) press conference on December 7, 2006 in light of the fact that she will become the chair of the Senate Environment and Public Works Committee. During her press conference, Senator Boxer outlined her plans for the Committee, which included intensive hearings on global warming. In addition, Senator Boxer touched on the importance of protecting the public health and

mentioned that clean up of Superfund sites would receive more attention. Senator Boxer also discussed the importance of environmental justice and noted that Senator Hillary Clinton's (D-N.Y.) subcommittee would look at the issue carefully.

- **“Valley Farmers Honored for Pest Control Concepts; Two Programs Recognized for Alternative Plans, but Activists Say Pesticide Use Still an Issue,” Fresno Bee (Dec. 7, 2006) at C1.** According to the article, California's Department of Pesticide Regulation (“Department”) has “singled out two programs in the central San Joaquin Valley for their innovative approaches to farming in a more environmentally friendly way.” The Department noted that recently released data reflected a decline in use of some highly toxic chemicals in 2005. In particular, the Department recognized the Stone Fruit Pest Management Alliance with the Integrated Pest Management Innovator Award for its efforts. One of its members included a farmer who conducted an Environmental Justice Tour in his peach orchard last summer and “discussed his reduced risk approach,” which did not use pesticides to protect the workers and their families. The Department also recognized the University of California Cooperative Extension's small-farm program in Fresno County, which provided aid to approximately 1,500 small family farms.
- **“More Than 50 Tribes Convene on Global Warming Impacts,” Space Daily (Dec. 7, 2006).** According to the article, the first-ever Tribal Lands Climate Conference (“Conference”) was held in Colorado on December 6, 2006. Leaders from over 50 tribes gathered to “address the growing global warming crisis,” which the article characterized as “a matter of environmental justice.” The focus of the Conference was “to unite tribal leaders from across the country with key decision makers in an open forum to discuss actions proactively addressing climate change.” The article noted that “Native Americans are critical eyewitnesses to global warming,” such that the Conference connected tribal advocates with key decisionmakers to allow Native Americans to “play a significant role in shaping how American addresses and generates active response to combat global warming.”
- **“Survey: Four Out of Five Texans Oppose Governor's ‘Fast Tracking’ of Dirty Coal-Fired Power Plants; Health, Environment/Global Warming Concerns Are Major Roadblocks to Public Support; Three Out of Four Texans Want Stepped-Up Conservation to Reduce Number of Plants,” PR Newswire US (Dec. 6, 2006).** According to the article, the plan of Texas Governor Rick Perry to “‘fast track’ consideration of 12 or more new coal-fired power plants without first addressing the concerns raised by health and environmental experts about the added pollution generated by the new plants,” lacks approval from an overwhelming majority of Texas residents. According to a poll conducted by the Austin office of the Environmental Integrity

Project (“EIP”), the majority of Texans oppose the new coal-fired power plant and “would prefer to see major conservation efforts undertaken in the State first . . . to offset a major portion of the electricity that would be required from the proposed new coal-fired power plants.” The Chair of Environmental Justice for the Texas NAACP weighed in against the plan, noting that “the argument of environmental justice has been broadened to reflect ‘the health of the masses versus the wealth of the few.’ What is happening in Texas with TXU’s fast-track plan to expand their coal-fired operations is a flagship example of the two ideologies colliding leaving Earth in the balance.”

- **“Firm Using Hazardous Material Faces 1 Hurdle to New Permit,” Tucson Citizen (AZ Dec. 6, 2006) at 6A.** According to the article, Brush Ceramic Products (“Brush”), a manufacturer in Tucson, Arizona, is at odds with the Environmental Justice Action Group and Center for Environmental Connections (collectively “Groups”) over a permit it received on November 8, 2006 “to use a new venting system that will cut down on emissions of beryllium.” Pima County had granted Brush the permit; however, the Groups filed an appeal, because they believed the permit was too lenient. According to the article, inhalation of beryllium dust can “cause a reaction that scars lung tissue and suffocates victims.” Environmentalists are concerned that 30 former Brush employees have contracted chronic beryllium disease and want the plant shut down. A hearing on the permit is scheduled before the Pima County Air Quality Board on December 21, 2006.
- **“Activists Use Research to Win Pollution Battles,” USA Today (Dec. 6, 2006) at 13A.** According to the article, environmental justice activists nationwide “are using a growing body of research on how pollutants exacerbate illness to block the building of facilities, relocate residents from contaminated communities, and gain other concessions from large firms.” Specifically, the article noted that people in poor and minority communities “have developed alliances and coalitions with scientists and lawyers and economists,” such that they “have much more definitive information as to how bad [the pollutants are] . . . [which means that] the science is catching up to the experiences of folks on the ground, and it helps prove the point.” The article then discusses specific examples of where “advocates for minority and poor communities do homework needed to win ‘environmental justice,’” which included a “significant victory” against Motiva Enterprises in Port Arthur, Texas, where the oil company “will pour up to \$3.5 million into the impoverished neighborhood as it expands a refinery.” In addition, the article discussed activists’ efforts in New York to address the high rates of asthma for children 14 and younger that was attributed to bus depots in Manhattan. The activists, who include WE ACT for Environmental Justice, seek to improve the air quality as well as the residents’ quality of life.

- **“Nail Salons’ Workers, Clients at Risk from Toxic Chemicals Insufficient Regulation Cited in Call for Improved Safety Practices,” Seattle Post-Intelligencer (Dec. 4, 2006) at A1.** According to the article, EPA has met with local and state health officials in Seattle, as well as city environmental and community activists to learn more about the risks that nail salons may pose to their workers and clients. EPA began meeting with the groups since July and plans to continue to do so next year. The article acknowledged that limited safeguards exist for workers and customers at nail salons. Groups such as the Community Coalition for Environmental Justice have expressed concern, since many manicurists are Vietnamese women who may have difficulty understanding warnings and chemical safety sheets. According to the article, the participants of the meetings “plan to monitor air quality in salons and to increase their educational outreach.”
- **“Haverhill Business Owner of 110 Towing Has Added Incentive to Cleanup Contaminated Property at 106 Hale Street,” US States News (Dec. 5, 2006).** The article set forth a press release from the Massachusetts Department of Environmental Protection (“DEP”) that announced that DEP “has penalized Michael Malvers \$30,000 for failing to cleanup contaminated property at 106 Hale Street, a former oil storage facility.” According to DEP’s Regional Director, the enforcement action “will lead to the cleanup of petroleum contaminated groundwater and soil in an Environmental Justice (“EJ”) area. . . . Enforcing environmental regulations in such areas is a priority for [DEP] since EJ neighborhoods also host, or are in close proximity to, many of the State’s contaminated and abandoned sites and large sources of air emissions.” The press release noted that “EJ areas include many densely populated urban neighborhoods in and around the State’s oldest industrial sites.” DEP has agreed to suspend \$25,000 of the penalty if Mr. Malvers “takes response actions by deadlines established in a consent order.”

2. **Recent Litigation.**

- No noteworthy **Recent Litigation** was identified for this period.

3. **Regulatory/Legislative/Policy.**

The following items were most noteworthy:

A. **Federal Congressional Bills and Matters.**

- **H.R. 6396, Hurricanes Katrina and Rita Environmental Justice Act, introduced on December 6, 2006 by Representative William J. Jefferson (D-LA). *Status: Referred to the House Committee on Energy and Commerce and the House Committee on Resources on December 6,***

2006, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the Committee concerned. The Bill seeks to “ensure environmental justice in the areas affected by Hurricanes Katrina and Rita.” In addition to defining the terms “environmental justice” and “fair treatment,” the Bill specifies that “[t]o the greatest extent practicable, the head of each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority, low-income populations that are rural or urban in the Hurricanes Katrina and Rita affected area.” In addition, the Bill purports to create the Hurricanes Katrina and Rita Interagency Working Group on Environmental Justice and sets forth their functions, which include: providing guidance to federal and state agencies on “criteria for identifying disproportionately high and adverse human health or environmental effects on minority, low-income populations that are rural or urban;” serving as a clearinghouse to develop an environmental justice strategy; assisting in the coordination of research; assisting in data collection; examining existing data and studies; holding public meetings; and developing interagency model projects. The Working Group will also submit a report to the President annually. In addition, the Bill provides that each federal agency will develop an agency-wide strategy on environmental justice and specifies what should be included within the strategy. The Bill also establishes a Federal Hurricanes Katrina and Rita Environmental Justice Advisory Committee and sets forth its duties, as well as its membership and meeting requirements.

- ***H.R. 6399, Strengthening Public Health Protections in Major Disasters and Emergencies Act, introduced on December 6, 2006 by Representative William J. Jefferson (D-LA). Status: Referred to the House Committee on Transportation and Infrastructure and the House Committee on Energy and Commerce on December 6, 2006, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the Committee concerned.*** The Bill seeks to “provide services to certain volunteers and workers,” who responded to Hurricane Katrina, Hurricane Rita, or to a major disaster or emergency. Among other things, the Bill sets forth a program that allows the President to ensure protection, assessment, monitoring, and study of health and safety if the President determines that one or more substances of concern “are being, or have been, released in an area declared to be a major disaster area under this Act.” Section 3 of the Bill requires the Secretary of Homeland Security, the Secretary of Health and Human Services, and the EPA’s Administrator to jointly enter into a contract with the National Academy of Sciences to “conduct a study and prepare a report on disaster area health and environmental protection and monitoring.” Included among the people

who will prepare the report will be an individual that has expertise in environmental justice and health disparities.

- No noteworthy “*Miscellaneous House and Senate Congressional Record Mentions of Environmental Justice*” were identified for this time period.
- **Federal Register Notices.**
 - **DOT, Environmental Impact Statement for Improvements To Enhance the Capacity and Improve the Operation of the Portal Bridge, a Rail Crossing Over the Hackensack River Along the Northeast Corridor Between Kearny, NJ and Secaucus, NJ, 71 Fed. Reg. 74,574 (Dec. 12, 2006).** The Federal Railroad Administration (“FRA”) of the United States Department of Transportation (“DOT”) announced that it will jointly prepare an Environmental Impact Statement (“EIS”) with the New Jersey Transit Corporation “to study improvements to enhance the capacity and improve the operation of the Portal Bridge, a two-track moveable swing-span bridge crossing over the Hackensack River along AMTRAK’s Northeast Corridor rail line.” FRA would like the public’s input on the scope of the EIS, which will evaluate various build alternatives, as well as the No Action Alternative. Comments on the EIS, which will evaluate “both project-specific and cumulative changes to the social, economic, and physical environment – including [among other things] . . . environmental justice,” are due by January 31, 2007.

B. **State Congressional Bills and Matters.**

- **California, Senate Bill 8, introduced on December 4, 2006 by Senator Sheila Kuehl (D-District 23). Status: Referred to Senate Committee on Rules on December 4, 2006.** The Bill seeks to amend Section 79402 of the Water Code. Senate Bill 8 addresses the CALFED Bay-Delta Program (“CALFED”), which in August 2000 was the subject of a Record of Decision that required CALFED to develop environmental justice goals and objectives. CALFED failed to adopt any “comprehensive environmental justice work plan” since that time, such that the Bill “addresses CALFED’s neglect of the environmental justice program by adding environmental justice as a twelfth program element. Upon enactment, CALFED agencies and the California Bay Delta Authority would be required to give environmental justice concerns the same level of attention as they give to the other 11 program elements.”
- **South Carolina, Senate Bill 171, introduced on December 13, 2006 by Senator Phil P. Leventis (D-District 35). Status: Prefiled. Referred to Senate Committee on Agriculture and Natural Resources on December 13, 2006.** Among other things, the Bill seeks to add Section 48-1-25 to

the Code of Laws of South Carolina “so as to require the Department of Health and Environmental Control [(“Department”)] to develop and implement a long range strategy for preserving and protecting the environment and public health, to require the Department to certify that every major environmental permitting action is consistent with this strategy and other state and local plans, and to evaluate the impact of the action on the environment and on low-income and minority persons.” Therefore, for every major environmental permitting, the Department may, among other things, “consider whether the permitted activity or project would disproportionately impact low-income and minority persons.”

- No noteworthy “*State Regulatory Alerts*” were identified for this time period.